

OFFICE OF THE
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STATE OF ALABAMA

88-00085

DEC 17 1987

Honorable Michael G. Kendrick
City Attorney
City of Homewood
City Federal Building, 15th Floor
Birmingham, Alabama 35203

Public Notice - Newspapers -
Legal Notices

1. Shades Valley Sun does not meet requirements for newspaper in which zoning ordinances and general ordinances of the City of Homewood may be published.

2. Shades Valley Sun does not qualify under Code of Alabama 1975, Section 6-8-60 as newspaper in which legal notices may be published.

Dear Mr. Kendrick:

Reference is made to your request on the behalf of the City of Homewood for an opinion of the Attorney General as to the following questions:

"WHEREAS, the City of Homewood has been notified by the Shades Valley Sun of a change in the Shades Valley publication schedule, a copy of which notice of change in publication schedule is attached hereto as Exhibit "A"; and

WHEREAS, the City of Homewood has, prior to the date of this Resolution, published its permanent Ordinances and legal publications as required by the laws of the State of Alabama in the Shades Valley Sun, pursuant to previous opinion of the Attorney General dated May 9, 1985, a copy of which is attached hereto as Exhibit "B"; and

WHEREAS, with the change in the publication schedule of the Shades Valley Sun, as attached hereto as Exhibit "A", the City of Homewood is concerned that it will no longer be able to fully comply with the terms and conditions of the Code of Alabama as relates to the publication of Ordinances and legal publications as required by the Code of Alabama;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Homewood, Alabama, in regular meeting duly assembled, a quorum being present, that the City Council desires, requires and needs an opinion from the Office of the Attorney General pursuant to § 36-15-18 Code of Alabama 1975 relating to the following inquiries:

1. Whether the Shades Valley Sun, considering the publication schedule, attached hereto as Exhibit "A", qualifies as a newspaper of general circulation published within the City of Homewood as required by the Code of Alabama and in particular, Code §§ 11-52-77, 11-52-78, 11-52-75, and 11-45-8.
2. Whether or not the Shades Valley Sun, considering the present publication schedule, attached hereto as Exhibit "A", would qualify as a newspaper of general circulation published within the City of Homewood for the purpose of legal publications as required by the Code of Alabama."

Turning to your first question, as stated in your request, the Attorney General ruled in an opinion to the Honorable James W. Porter, II, Attorney for the City of Homewood dated May 9, 1985 that the Shades Valley Sun qualified as a newspaper of general circulation under Code of Alabama 1975, Section 11-52-77 so that a proposed zoning ordinance of the City of Homewood could

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be published therein. At this time the newspaper was being published weekly. According to an article from the Shades Valley Sun enclosed in your request, the newspaper is now going to be published twice monthly.

Concerning the publication of zoning ordinances Section 11-52-77 states in pertinent part:

"No ordinance shall be passed by any municipal corporation under the authority of this article unless and until the proposed ordinance has been published in full for one insertion and an additional insertion of a synopsis of the proposed ordinance, one week after the first insertion, which synopsis shall refer to the date and name of the newspaper in which the proposed ordinance was first published; both such insertions shall be at least 15 days in advance of its passage and in a newspaper of general circulation published within the municipality, or, if there is no such newspaper, then by posting the proposed ordinance in four conspicuous places within the municipality, together with a notice stating the time and place that the ordinance is to be considered by the municipal legislative authorities and stating further that at such time and place all persons who desire shall have an opportunity of being heard in opposition to or in favor of such ordinance."

Section 11-52-78 provides that the above stated requirements of Section 11-52-77 shall equally apply to all changes and amendments in zoning ordinances. In Builders Development Company v. City of Opelika, 360 So.2d 962 (Ala. 1978) the Supreme Court of Alabama determined that under Section 11-52-77, before a zoning ordinance or amendment may be passed by a municipality, the ordinance or amendment must be published once a week for two consecutive weeks. If a zoning ordinance or amendment is published in the Shades Valley Sun, a newspaper which is now published twice monthly, it would not meet the "once a week for two consecutive weeks" publication requirement of Section 11-52-77. Therefore, the Shades Valley Sun does not qualify as a newspaper in which the zoning ordinances and amendments of the City of Homewood may be published to comply with the requirements of Section 11-52-77 and Section 11-52-78.

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Newspapers in which zoning ordinances are published must also meet the requirements of Code of Alabama 1975, Section 6-8-60 concerning the designation of a newspaper for publications required by law.

Regarding the publication of general municipal ordinances Code of Alabama 1975, Section 11-45-8(b) provides in pertinent part:

"All ordinances of a general or permanent nature, except as provided in subsection (d) of this section, shall be published in some newspaper of general circulation published in the municipality, but if no such newspaper is published in the municipality such ordinances may be published by posting copies thereof in three public places within the municipality, one of which shall be at the post office or the mayor's office in such city or town."

General municipal ordinances must also be published in a newspaper which meets the requirements set out in Section 6-8-60, previously mentioned. This provision states:

"The party in interest or at whose instance the publication of notice is to be given by advertisement in a newspaper may designate the newspaper in which such advertisement shall be made. If the officer charged with the duty of making the advertisement disregards such designation and makes advertisement in some other paper, he must pay the cost thereof and shall not be entitled to reimbursement; but all publications by any law, mortgage or other contract to be published in a newspaper must be published in any newspaper printed in the English language which has a general circulation in the county, regardless of where the paper is printed, if the principal editorial office of the newspaper is located within the county and which newspaper shall have been mailed under the second class mailing privilege of the United States postal service from the post office where it is published for at least 51 weeks a year."

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In an opinion of the Attorney General found at Quarterly Reports of the Attorney General, vol. 180, p. 18, the following requirements were enumerated for a newspaper to qualify under Section 6-8-60 as one in which legal notices may be published: (1) printed in the English language, (2) have general circulation in the county, (3) have its principal editorial office in the county, (4) be mailed under the second class mailing privilege and (5) be published for at least 51 weeks a year.

Although the Alabama Supreme Court concluded in Davis v. City of Tuscumbia 236 Ala 552, 183 So.2d 657 (1938) that only one publication of a municipal ordinance is essential under Section 11-45-8(b), if a newspaper does not meet the requirements of Section 6-8-60, the publication of the ordinance cannot be made in that newspaper. Because the Shades Valley Sun will not be published for at least 51 weeks a year, as required by Section 6-8-60, general ordinances of the City of Homewood cannot be published in that newspaper.

Regarding your second question as to whether publications required by law may be published in the Shades Valley Sun, the answer is in the negative. As previously stated, the requirements for a newspaper in which legal publications may be published are set out in Section 6-8-60. If the Shades Valley Sun is not published for at least 51 weeks a year, the requirements of Section 6-8-60 are not met and publications required by law cannot be made in that newspaper.

I hope that your questions have been adequately answered. If our office can be of further assistance, please let us know.

Sincerely yours,

DON SIEGELMAN
Attorney General

By:



LYNDA K. OSWALD
Assistant Attorney General

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